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Drugs & Index.

The
CONSTITUTION
AND
PROHIBITION

By
Senator William E. Borah





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THE CONSTITUTION AND PROHIBITION

By Senator WILLIAM E. BORAH

Mr. BORAH. Mr. President, it has been about eight years since we amended the Constitution of the United States and incorporated in it what is known as the eighteenth amendment. That amendment was not adopted, as is so often said, in haste or without due consideration and deliberation upon the part of the people of the United States. For some 50 years the subject of prohibition had been under discussion throughout the country, and, if I remember correctly, at the time of the ratification of the amendment 33 States of the Union had adopted prohibition. After the amendment was submitted to the States for ratification, I believe, all except two States ratified it. No amendment to the Constitution has ever been adopted after so full and prolonged consideration as was the eighteenth amendment. Whatever its merits or demerits may be, whether it should be now repealed or modified, there can be little controversy over the proposition that it was a deliberate act at the time it was written into the Constitution of the United States. It was perfectly clear at that time that the people intended to promulgate a national policy and that policy they inserted into their charter of government.

This amendment provides, in part, as follows:

SECTION 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from, the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

The language is specific and all-encompassing—that the manufacture, or sale, or importation,

*In the United States Senate
April 14, 1926*

or exportation of intoxicating liquors "for beverage purposes is hereby prohibited."

This part of the Constitution has been construed by the Supreme Court of the United States; and in the first important case which went to the court involving a construction of it, the court said that the first section of the amendment, the one embodying the prohibition, is operative through the entire territorial limits of the United States, binds all legislative bodies, courts, public officers, and individuals within those limits, and of its own force invalidates every legislative act, whether by Congress, by a State legislature, or by a Territorial assembly, which authorizes or sanctions what the amendment prohibits.

The second section of the amendment—the one declaring that—

The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation—

does not enable Congress or the several States to defeat or thwart the prohibition but only to enforce it by appropriate means.

Thus, Mr. President, there was written into the fundamental law, into the charter under which we live, an inhibition against the manufacture or sale of intoxicating liquors, and that binds the Congress of the United States, the several legislatures of the different States, the courts of the country, and each and every particular individual in the country; and so long as it remains in the Constitution it is the duty of the several legislatures, of the Congress, of the courts, of all agencies of government, of all public officials and of individuals to obey and in their respective places in organized society to assist in the enforcement and upholding of the Constitution. It imposes a responsibility and an obligation which neither the Congress nor the State legislatures can honorably shirk or in decency pass on to some other body. It binds every official and every citizen, and so long as it remains there it

is the first duty of good citizenship to respect it and seek to uphold it.

We are now, Mr. President, engaged in a great campaign to find a way by which to evade the Constitution of the United States without apparently doing so; to find a method or a means by which we can counteract or nullify its terms and conditions without specifically repealing this part of the Constitution or without modifying it directly. It is a campaign to sterilize the Constitution while professing to respect it.

No one contends that those who are opposed to prohibition have not the right to carry on a campaign for the purpose of changing the Constitution. Any citizen or any body of citizens who believe that this is an unwise policy, that it is a policy which can not be sustained, a principle which can not be enforced, are not subject to criticism in their effort to remedy it by eliminating it from the fundamental law of the land; but the point which I desire to stress at this time and at all other times in the discussion of this matter in which I shall take part is that so long as it remains a part of the Constitution, so long as it is unchanged, it is the duty of every citizen loyally to support and maintain it, not only in letter but in spirit.

Mr. EDGE. Mr. President, will the Senator yield?

Mr. BORAH. I yield.

Mr. EDGE. The Senator, as I followed his argument, implies that the national prohibition act which was passed by Congress as a method of enforcing the eighteenth amendment is as liberal an interpretation of the eighteenth amendment as Congress would be justified in making. Does the Senator take that position?

Mr. BORAH. I will come to that discussion in a few minutes. I am going to take up the proposed amendment.

Mr. EDGE. I desired to ask two or three

questions in that connection. If the Senator prefers to have me wait, I will do so.

Mr. BORAH. Yes; if I do not cover the matter, I invite the Senator to the floor for the purpose of elucidating it by questions, because I have no desire to avoid that proposition. It is a legitimate part of the discussion, and we should be perfectly willing to discuss it.

As I said, the right to amend the Constitution is a right which can not be denied, and no one can be criticized for seeking to amend it. I desire to say, in passing, that the insertion of this amendment in the Constitution of the United States involved what to my mind was a very serious governmental proposition. Whether it was wise to take over from the States the great body of police power which we took over from the States at the time we amended the Constitution is a very serious problem—not only a problem relating to the question of prohibition, but a problem relating to the fundamental principles upon which our Government is organized. It touches the great and vital question of local self-government, and I do not wish to minimize its importance in this problem of prohibition. I find no fault, therefore, with those who believing it to have been a mistake would seek to correct the mistake by amending the Constitution.

Mr. WADSWORTH. Mr. President, will the Senator comment upon another phase of the eighteenth amendment? Is it not also extraordinary in that its ratification amounted to the insertion of a sumptuary police statute in a constitution, thereby depriving the majority of the people as represented in the House of Congress of any opportunity of legislating upon a problem of that kind by simple enactment of law?

Mr. BORAH. Undoubtedly, Mr. President, that is one of the serious problems which are involved in this matter; and I think perhaps that is incorporated in the other proposition which I made relative to the attempt to take over and

take into the Constitution a principle of police power, and drawing away from the States the police power which heretofore had belonged to them.

But, Mr. President, those things can only be changed by an amendment of the Constitution itself. If it was a mistake to draw to the National Government this police power, if it was a mistake to put into the Constitution of the United States a principle of sumptuary law, the only way in which it can possibly be met is by a proposal either to repeal the eighteenth amendment or to modify it. Indeed, Mr. President, I doubt very much if modification will reach it. It seems to me if we are going to deal with the question which we are now discussing—the question of whether it is wise to take over this police power or to deal with this matter as a sumptuary principle in the Constitution—we can not meet it except by an elimination of the provision of the Constitution itself. So long as the Constitution stands one thing is more fundamental than prohibition, and that is the enforcement and the upholding of the Constitution. It involves the question of whether we are a law-abiding people.

We are discussing, these days, the question of what we shall do with reference to amending this provision of the Constitution; and about the first suggestion that comes to me when I suggest that the situation can be met only by constitutional amendment is that it takes too long, that it will take an infinite amount of time to change the Constitution of the United States, and that there must be some way by which the law can be so modified that we can get intoxicating liquor without offending the Constitution itself. In other words, the clear implication is that by ignoring not only the spirit of the Constitution but the letter of the Constitution, we can pass a law which will give percentages of alcohol sufficient to enable the people to enjoy, as they claim, their right to the use of intoxicating liquor. Impatience with the law is mob rule. The

man hunting his neighbor with a shotgun is simply impatient with the law. And those who would disregard the Constitution because it takes too long to amend it are appealing to the spirit of the mob.

Mr. President, it is no part of the duty of a citizen to ferret out means by which to escape from the terms of the Constitution. It is no part of good citizenship, in my judgment, when citizens find in the Constitution a provision which they do not like, to see how far they can possibly go toward evading it or nullifying it without getting within the inhibition which the courts may lay upon them. So long as the provision is there, instead of seeking means to evade it, it is the duty of the citizens of the United States to find means to enforce it. If the means do not exist at this time, if the law is not sufficient and efficient, and if the power behind the law is not sufficient to enforce it, then, instead of finding means by which to evade it, it is our duty, and the obligation rests upon us, to find more effective means by which to make the Constitution effective. Change it if you will; rewrite it again if you may; but so long as it is there, it is the duty of every loyal citizen to see to its enforcement.

Some of the propositions which have been made seem to me most extraordinary. If there rests upon the Federal Government one peculiar exclusive and supreme duty it is to see to the enforcement and the maintenance of the Constitution of the United States and not leave its enforcement to the several States of the Union. The respective States of the Union are not primarily the custodians of the integrity of the Constitution. The custodian of that integrity is the Federal Government itself. To my mind any scheme or any plan which would shift to the States alone the obligation or the burden of enforcing the Constitution is a most pronounced evasion of the most solemn obligation which

rests upon the National Government, and that is to protect its own charter, protect its own life, for the Constitution is its life.

The United States attorney for New York a few days ago in an interview said:

Let Congress modify the Volstead Act so as to permit each State to define nonintoxicating liquor, this definition to bind both State and Federal authority.

So modify the Volstead Act as to permit each State to be the judge of how and to what extent the Constitution of the United States applies in this respect and what is an interpretation and what is an enforcement of the Constitution of the United States? The proposal is not to amend the Constitution of the United States. The provision which imposes upon the National Government the inhibition of the sale and use of intoxicating liquors remains; but the proposal is to modify the statute which was passed, leaving the enforcement of the principle of the Constitution and the protection of the integrity of the Constitution to the respective States, while the National Government itself entirely abandons that obligation.

It is seriously proposed that the Federal Government shall abandon the interpretation and enforcement of its own great charter and through sheer cowardly, contemptible expediency leave it to 48 States with 48 different rules and standards to enforce and uphold it. To such desperate and despicable expediency do men resort when they have not the candor to urge repeal or the courage to preach open violation.

Mr. President, as a matter of fact, the great Civil War was fought over that principle. To my mind it is treason; it is a deliberate evasion of the Constitution, a nullifying and an annihilating of the charter under which we live. It is disloyalty to the first principle of a Federal Union and a violation of the oath which every Federal officer takes when he takes office.

Why, suppose the State of New York fixes a percentage of alcoholic content such as to be intoxicating. Shall the Congress of the United States and the officials of the United States, the custodians of the Constitution, acquiesce in the proposition and connive at its disregard of the Constitution? Shall we leave it to the State of New York or to the State of Idaho or to the State of California to say when and how and to what extent the Constitution of the United States shall be applied and enforced? It would make 48 standards. You might have a standard of 7 per cent in New York, and if so, they could ship their product to every State of the Union.

You might have a standard of 2 per cent in the State of Louisiana, and yet New York could send her 7 per cent product into the State of Louisiana against the standard which they have established there. We would have 48 different standards, no one guarding or protecting or enforcing or maintaining the Constitution, but 48 different States applying their different rules.

A few days ago there came to me a resolution passed by a committee of one of the dominant parties of the country in a near-by State, and the resolution reads:

Resolved, That the county committee (of the State and county) recommend to the Congress of the United States that the so-called Volstead liquor law be amended so as to permit light wines and beer.

Of course, the constituency for which they were politically speaking understands that "light wines and beer" mean intoxicating liquor. All this disturbance and all this debate are not for the purpose of securing nonintoxicating liquor. The people who are insisting upon this change are not insisting upon the change for the purpose of getting more nonintoxicating liquor. What they understand is that they are to secure intoxicating liquor; that wines and beer such as will give them their intoxicating drinks are to be allowed. We have a great political party, one of

the dominant parties in the country, actually passing resolutions petitioning the Congress of the United States to violate or connive at the violation of the Constitution of the United States, and doing it for sheer political expediency.

Why not say to the people who are asking for light wines and beer, "You can not secure intoxicating liquors which you desire until you amend the fundamental law under which you live"?

If this question is to be presented to the people, let us present it in such a way that it will raise the real issue, and either give or deny to them that for which they are asking, to wit, intoxicating liquor. The Legislature of the State of New York is now in the course of passing a referendum law, as I understand it, and so far as that is concerned, New York is simply in the lead. Other States will be asked to follow. In the referendum which they are to send out, if they pass the law, will be this question:

Should the Congress of the United States modify the Federal act to enforce the eighteenth amendment to the Constitution of the United States so that the same shall not prohibit the manufacture, sale, transportation, importation, or exportation of beverages which are not in fact intoxicating, as determined in accordance with the laws of the respective States?

That would delegate or leave to the respective States the power and authority to say whether a particular beverage was intoxicating. If the State fixes a percentage which makes it intoxicating, what is the Government of the United States to do? The Government of the United States is to remain silent. The keeper of the Constitution, the sole power to enforce it throughout the Union, is to remain silent and connive at the violation of it from day to day and from year to year. That goes on through all the 48 States of the Union. It means legal chaos, it means constitutional anarchy, it means the break-

down of constitutional government. That referendum challenges the sincerity if not the loyalty of the great State of New York.

The great debate which took place prior to the Civil War was over that one great question, whether the States should determine what laws should be enforced and what should not, under the Constitution of the United States.

Mr. BRUCE. Mr. President—

The PRESIDING OFFICER (Mr. ODDIE in the chair). Does the Senator from Idaho yield to the Senator from Maryland?

Mr. BORAH. I yield.

Mr. BRUCE. The Senator will remember, however, that when the South asked that the fugitive slave law be enforced, legislatures throughout the free States connived, in just the manner the Senator from Idaho has reprobated so strongly, for the purpose of defeating the rights of the South under that law, and passed personal liberty laws. Judges and juries, too, refused to put the law into execution.

Mr. BORAH. Does the Senator want to plow through that mire of disgrace and degradation again? Does he appeal to a defiance of the Constitution as a precedent?

Mr. BRUCE. I am glad to hear the Senator say it was a period of disgrace and degradation. As far as I know, the Senator is the only member of the Republican party who has ever made such a confession.

Mr. BORAH. I presume some might doubt my Republicanism, but I do not intend anyone shall challenge my devotion to the Constitution.

Mr. BRUCE. As I look at it, his Republicanism is about the only blemish on the character of the Senator.

Mr. BORAH. The Senator would not contend for a moment that the Northern States which un-

dertook by legislation to nullify the provisions of the Constitution which gave the Southern States the right to follow their slaves were applying constitutional principles, would he? They were simply evading, nullifying, and destroying the Constitution itself.

Mr. BRUCE. Yes; but I mention it as another illustration of the fact that when laws undertake to fly in the face of nature they will not be observed.

Mr. BORAH. Very well, Mr. President; the Senator and I will not argue that. But let us go back to the fundamental law and submit that question to the people of the United States and see what they say about it. If they take it out, every man should live up to it with that out, just as now we should live up to it with it in.

Mr. BRUCE. All I meant to say was that slavery became, in the course of time, an offense to the moral instincts of the free States of the Union and of the world, and of course constitutional restraints proved as utterly futile for the purpose of keeping down the bitter hostility excited by the institution of slavery as the eighteenth amendment has proved in keeping down the natural desire of men for a form of rational enjoyment, within proper limits.

Mr. CARAWAY. Mr. President, will the Senator from Idaho permit me to ask a question?

Mr. BORAH. Yes.

Mr. CARAWAY. If we should carry out the theory that the States should be the interpreters of the Constitution, you could repeal or modify the peonage law and reestablish slavery, could you not?

Mr. BORAH. I suppose you could.

Mr. CARAWAY. If any State should wish to do it; if the States should be the guardians of the Constitution.

Mr. BORAH. Mr. President, suppose some one in New York or New Jersey or Idaho should make a proposal with reference to determining for itself, as a State, whether or not it would obey the fifteenth amendment, or determining for itself how far it would be bound by the fourteenth amendment, or determining for itself how far it would be bound by the seventeenth amendment.

What would these gentlemen who are now proposing that the States shall pass upon the question as to the extent to which they will be bound by the eighteenth amendment say to such a proposal? Or suppose the fifth article of the Constitution of the United States were involved, where the property rights, the vested interests, of the great property-holding people of the United States are protected; and suppose the Legislature of New York, or a mass meeting in New York, should pass a resolution that the State of New York would determine for itself how far it would be bound by that provision. The Department of Justice here in Washington would have the members of that mass meeting in prison in 48 hours as communists and revolutionists. And if any of their ancestors had come here since the American Revolution they would likely seek to deport them as communists.

Mr. BRUCE. Mr. President, will the Senator permit me to ask another question?

Mr. BORAH. I yield.

Mr. BRUCE. Did not the South after the Civil War determine for itself, without regard to the Fourteenth and fifteenth amendments to the Federal Constitution, whether it would or would not have an ignorant negro suffrage riveted upon its neck? Did not every southern man of every station in life exercise every power that lay in him to stay the consequences of that frightful curse?

Mr. BORAH. Mr. President, so far as I

know every law passed by the Southern States and now in force with reference to negro enfranchisement, or the right of the Negro to vote, has been sustained by the Supreme Court of the United States as constitutional.

Mr. BRUCE. Another illustration were those amendments of the utter vanity of passing laws that violate the primal instincts of human nature. What good did they do, so far as any practical consequences were concerned? Outraged human nature claimed its rights, and there is nothing which I regard with more satisfaction than the fact that when I was a boy, living in a remote countryside, all the white citizens of that community were banded together like brothers for the purpose of nullifying those amendments to the Federal Constitution, and defeating the will of Congress when it endeavored to enforce them; and, thank God, they defeated it.

Mr. BORAH. Mr. President, the Senator is preaching the doctrine of communism here in the Senate of the United States.

Mr. BRUCE. Oh, no.

Mr. BORAH. Yes, the Senator is; he is preaching anarchy.

Mr. BRUCE. It is not the Senator from Maryland, but the Senator from Idaho, who wishes us to recognize the Soviet Government.

Mr. BORAH. I do; and I think it might serve as a good example for us,* the way we are proposing to do things in this country at this time. I think we could learn lessons from them if such doctrine as I hear now is to prevail. But do I understand the able Senator from Maryland to contend that the Southern States are now, in violation of the Constitution and in violation of the Supreme Court decisions, disfranchising the negroes of the South?

Mr. BRUCE. I mean to say that the South has solved its own suffrage problems in its own

way, and it has solved them so wisely, despite constitution and statutory inhibitions, that the whole country has acquiesced in its conduct.

Mr. BORAH. The Senator did not answer my question. Does the Senator contend that the solution which he speaks of is a solution in contravention and in violation of the Constitution of the United States and the decisions of the Supreme Court of the United States?

Mr. BRUCE. What is the use of asking me to say something that everybody knows? The southern people had to take their choice between constitutional abstractions and civilization, and they selected civilization.

Mr. MOSES. Oh, no, Mr. President, if the Senator from Idaho will permit me. The southern people had another choice. The implications of the Constitution are that a certain vote may be suppressed, but if suppressed, there is a constitutional price to be paid for it. It is a great and high privilege to suppress millions of votes, and why does not southern chivalry come to the front and pay the price which the Constitution mentions?

Mr. BRUCE. I recollect that one of the malefactors who gave the South the greatest trouble after the Civil War was a Moses of South Carolina.

Mr. MOSES. He did not come there; he was raised there. He was not a carpetbagger.

Mr. BRUCE. Surely that State was incapable of producing such fruit as that.

Mr. MOSES. He was not a carpetbagger; he was indigenous.

Mr. BORAH. If I may say just a word in explanation, at the risk, I suppose, of being criticized, I have always thought that the enfranchisement of the negro, at the time it took place, was a mistake. It was unjust to the white and unjust to the colored man.

Mr. BRUCE. Of course, the Senator has.

Mr. BORAH. I have said here on the floor of the Senate I thought it was a mistake to take a race which had been in slavery for 300 years, and overnight put upon them the burdens and obligations of discharging political duties in a great representative Republic, an almost impossible proposition. It required something of the negro that no race in history could have adequately met. He would have been better off to have worked out through time and education his franchise. But I do not agree with the Senator that at the present time the Southern States are doing these things in violation of the Supreme Court decisions. They have worked out a solution within the Constitution and within the decisions of the Supreme Court of the United States.

Mr. McKELLAR. That is precisely what we have done in Tennessee.

Mr. BRUCE. I think the less we say on the subject the better.

Mr. BORAH. I think so.

Mr. BRUCE. But I will say that it cost us a considerable amount of blood and tears to bring the rest of this country to the conclusion that the Senator from Idaho has reached.

Mr. BORAH. The Senator from Idaho has reached just one conclusion, and I put it plainly and I challenge the Senator from Maryland to controvert it—that so long as the Constitution of the United States remains as it is, it is the duty of every loyal citizen to help enforce it.

Mr. BROUSSARD. Mr. President, will the Senator yield to me for a question?

Mr. BORAH. I yield.

Mr. BROUSSARD. Does the Senator hold that the Congress of the United States may fix a higher percentage than one-half of 1 per cent of alcoholic content?

Mr. BORAH. I hold that the issue which we are now seeking to meet is not a percentage within nonintoxicating percentages. What is being sought is to give a percentage which will give these people an intoxicating drink.

Mr. BROUSSARD. Does the Senator contend that the fixing of 1 per cent would be a violation of the spirit or the letter of the eighteenth amendment?

Mr. BORAH. I am not sufficiently familiar with drinks to know, but what I say is that if we fix the percentage, it does not make any difference what it is, so that the beverage is still nonintoxicating, we will have the liquor question here just as prominently and persistently and pronouncedly as ever before. What the Senator's constituency, if he is speaking for the wets, is asking for is an intoxicating drink. They are not asking for a percentage that will add a little more flavor to a drink. They want something which will be intoxicating, and that is what they are fighting for. Does the Senator contend that the people who oppose the present Volstead Act would be satisfied if it were changed so as to give a nonintoxicating drink?

Mr. BROUSSARD. I hope the Senator will permit me to say just a word. The Senator has started out by saying that he is not acquainted with liquors, and then he goes on to assume what those who advocate modification want. My purpose in rising was to ask a question. Does not the Senator believe that those who believe that one-half of 1 per cent is not justified under a proper interpretation of the eighteenth amendment are entitled to fix such a percentage by law and have the Supreme Court of the United States pass upon that law, just as they passed upon the fourteenth and fifteenth amendments to the Constitution?

Mr. BORAH. I will answer that, and I trust that my answer will not seem to be offensive, but

if we fix the percentage and make it such that it will not give intoxicating liquors to the people who are asking for a change, it will not solve the question at all. What we are seeking to do, as I understand it, is to readjust the situation so as to satisfy, if possible, the country against persistent insistence upon a change of the prohibition law. If we fix it at a percentage which does not give intoxicating liquor, it will solve nothing. On the other hand, if we do fix it at a percentage which will give intoxicating drinks, we will have violated the Constitution.

Mr. BROUSSARD. During the war 3.75 per cent beer was declared nonintoxicating by the Supreme Court of the United States. Would the Senator believe that that is not a reasonable interpretation of the limitation placed upon Congress to define intoxicating liquor and to fix 3.75 per cent?

Mr. BORAH. Suppose we fix it at 3.75 per cent; if it is nonintoxicating and found to be such in practice as well as in theory, we will have solved nothing.

Mr. BROUSSARD. We have not tried it. We have not tried 3.75 per cent beer. The people were satisfied with 3.75 per cent beer during the war.

Mr. BORAH. Oh, no.

Mr. BRUCE. Mr. President, will the Senator yield to me?

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Maryland?

Mr. BORAH. I yield.

Mr. BRUCE. I am going to try to take up the matter in a little less controversial spirit. The proposition that the Senator seems to be emphasizing is the proposition brought forward by Mr. Buckner. Of course, so far as we are concerned, we are not responsible for any proposition brought forward by Mr. Buckner.

The bills which are actually pending before the Committee on the Judiciary are bills which provide for 2.75 per cent and for beer that does not exceed the intoxicating point. So far as I know, the proposition or the question as to what shall be an intoxicating beverage and what shall not be an intoxicating beverage is not proposed to be remanded, so far as we are concerned, to the States at all. Surely the Senator would not undertake to say that 2.75 per cent beer is an intoxicating thing?

Mr. BORAH. Surely the Senator from Maryland would not undertake to say that if it is not intoxicating that the people for whom he speaks would be satisfied?

Mr. BRUCE. I would. In point of fact, I can speak——

Mr. BORAH. I am not speaking now particularly of legal constituents, but I am speaking of the people who are insisting that they have the right to have intoxicating liquor.

Mr. BRUCE. Because the people of Maryland, for illustration, are asking for 2.75 per cent beer, it does not follow that they are asking for an intoxicating beverage. The ordinary alcoholic content of beer made in the city of Baltimore before the adoption of the eighteenth amendment was 3 to 3.5 per cent. The Senator will probably be surprised when I tell him, because it is obvious that he is a highly temperate man——

Mr. BORAH. I am, I trust.

Mr. BRUCE. So am I—that it was the practice of the brewers in Baltimore City to give a gratuitous allowance each day of 16 glasses of beer to each and every driver of a brewery wagon, so slightly intoxicating was the merchantable beer that was sold at that time. A man simply had almost to drown himself—he had to submerge himself practically in a sea of

beer—to intoxicate himself on 2.75 per cent beer.

Mr. BORAH. That is according to how long he has been at the business.

Mr. BRUCE. The general idea is that the longer he has been at it the more thoroughly inured he becomes. But the Senator, I think, is mistaken when he ignores the fact that a very large measure of relief, as the opponents of the Volstead Act see it, would be given by a modification of the Volstead Act allowing 2.75 per cent beer. Light wine is a different matter. I have never had much to say about light wines. I am not really sufficiently informed on the subject to know what percentage of alcoholic content we could define in wine that would justify any wine being called a light wine; but so far as beer is concerned there is no reason in the world, if we are influenced simply by considerations of intoxication, why the American population should not be allowed the privilege of drinking beer. The very rich and well-to-do will obtain their wine anyhow; you need not trouble yourself about that.

Mr. BORAH. I am going to trouble myself about it. So long as this Constitution remains as it is I am going to trouble myself about it. I look upon the rich and influential who violate the Constitution as the most dangerous people in the whole community.

Mr. BRUCE. They will take care of it in one way or another, and it does not make any difference how much you concern yourself about it or what abstract propositions you may bring forward with respect to it, they will have it, just as liberal men will have their Sundays without any extreme, puritanical, blue restrictions. Just as they will have all sorts of things without regard to merely teasing, unreasoning restrictions.

I am not going to interrupt the Senator any

more, but I wish to direct his attention to the fact that there is nothing in 2.75 per cent beer, if we are right, that is inconsistent at all with the provisions of the eighteenth amendment, which are simply aimed at intoxicating beverages.

Mr. BORAH. In other words, I understand that all this great drive, this universal hubbub throughout the United States, this uproar in the market place, these hearings, and this great fight that is going on, are to get a little more non-intoxicating beverage, more of the same kind of stuff which you now reject.

Mr. BRUCE. The Senator knows, so far as I am concerned, that his remark is not applicable to me, because nobody knows better than he does that I have proposed an amendment to the eighteenth amendment to the Federal Constitution.

Mr. BORAH. Exactly. I commend the Senator for his courage and his intelligence in meeting the issue.

Mr. BRUCE. I do not think that 2.75 per cent beer would afford to the rational instincts of the people of this country the full measure of relief to which they are entitled.

Mr. BORAH. That is what I thought. [Laughter.] A Daniel come to judgment!

Mr. BRUCE. And I hope I am going to be a Daniel that will come to such a stern judgment as to sweep away all the unnatural and artificial restrictions of prohibition.

Mr. BORAH. That is what I am talking about. The Senator wants to sweep away the inhibition against intoxicating liquors.

Mr. BRUCE. In the ordinary course of constitutional procedure. We have to take the first step in every relation of life. Now, that 2.75 per cent is the first step. If the people of

the United States are not willing to go any further, they will go no further.

Mr. BORAH. Of course we realize that that is the first step, and it is to weaken the law and break down the morale of the situation and then we will have 4 per cent and 5 per cent, and the next thing we will repeal the Constitution.

Mr. BRUCE. It may be that 2.75 per cent beer would afford such a measure of relief to natural human instincts that public opinion would then come to the aid of the law and we would not have this disgraceful spectacle of the law weekly, daily, hourly, momentarily violated in the United States.

Mr. BORAH. In other words, all that stands between the people of the United States and obedience to the law is the difference between 1.75 per cent beer and 3.75 per cent beer.

Mr. BRUCE. No; the difference is the difference between rational municipal ordinances and irrational municipal ordinances which violate one of the elementary impulses of human nature.

Mr. BORAH. The difference, with all due respect to the able Senator from Maryland, is the difference between the Constitution as it is and the Constitution repealed. If the Senator wants to repeal the Constitution of the United States he has a perfect right to start that campaign. No one is justified in criticizing that. The Constitution was made and will be unmade by the people of the United States. If it is not satisfactory to us, let us change it. But what I contend is that all this maneuvering with reference to percentages, and so forth, is to evade the Constitution of the United States, to undermine and destroy the morale of its enforcement, and not for the purpose of solving the question within the provisions of the Constitution.

Mr. BRUCE. But, may I ask the Senator from Idaho, if it is legally competent for us to enact a statute allowing 2.75 per cent beer without violating the provisions of the eighteenth amendment, is there any reason why that should not be done?

Mr. BORAH. Oh, no; but it will not solve anything. It will not settle anything, if it is not intoxicating. Your fight will go on.

Mr. BRUCE. There is where I do not agree with the Senator.

Mr. BORAH. The Senator just said that he has not much to say about light wines.

Mr. BRUCE. And I have not.

Mr. BORAH. But there are thousands and hundred of thousands and millions of people in the United States who have something to say about light wines. Will they be satisfied with that beer? They would be offended if you offered them beer.

Mr. BRUCE. I confess my ignorance of that subject. I do not know exactly, technically speaking, what constitutes a light wine and a heavier wine. I do not know. I know, as I said before, that whether we like it or dislike it, the affluent portion of the American population are going to have their wine—Constitution or no Constitution, statute or no statute. That has been demonstrated.

Mr. BORAH. I beg the Senator to permit me to proceed. The Senator has stated the issue. Let us argue it. The Senator has stated that the issue is that they propose to have what they want with reference to intoxicating liquor—

Mr. BRUCE. They do.

Mr. BORAH. Regardless of the Constitution of the United States or the statutes?

Mr. BRUCE. They do.

Mr. BORAH. If that be true, and I have no doubt that is just what the Senator thinks——

Mr. BRUCE. I do.

Mr. BORAH. If that be true, is not the orderly thing to do, so long as we profess to live under a constitutional government, to amend the Constitution in the manner provided by the Constitution itself, and rewrite the charter under which we live? Can the Senator conceive anything more degrading, demoralizing and undermining to the good citizenship of the people than to have a solemn pledge in the Constitution of the United States and to have great Senators stand upon the floor of the United States Senate and say the people are going to have what they want regardless of whether it is constitutional or not?

Mr. BRUCE. I can conceive of nothing more deplorable, nothing more tragic, nothing more scandalous, but I take human nature as it is. In other words, I look at this question exactly as the free-soiler looked at the institution of slavery.

Mr. BORAH. Of course, and when Wendell Phillips spoke with reference to that proposition he said, "To hell with the Constitution."

Mr. BRUCE. Yes; he did.

Mr. BORAH. But there came along the man who, disregarding Wendell Phillips, found a way to solve that great question by amending the Constitution of the United States and effectuating the change which he desired under the Constitution and not in violation of it.

Mr. BRUCE. How did he find it? He found it by tracing his way through fire and smoke and flame and blood.

Mr. BORAH. I am one of those who be-

lieve that the Constitution of the United States is of sufficient value, if it is necessary, to trace our way through blood and fire in order to maintain it as it is. [Applause on the floor and in the galleries.]

Mr. BRUCE. So do I when a great question like slavery is involved; so do I when a great issue like that of national sovereignty is involved; but not when nothing more is involved than the question as to whether a man shall or shall not be allowed to enjoy what I conceive to be a perfectly legitimate measure of human indulgence.

Mr. BORAH. Yes. Well, Mr. President, there is scarcely any vice that human nature may indulge that the particular person who indulges it does not resent the fact that the law prohibits or inhibits him from doing so.

Mr. BRUCE. That is not so. There is no uprising against punishment for forgery or against punishment for false pretenses, and, above all, there is none against punishment for murder or for rape or for arson.

Mr. BORAH. But every man who commits forgery feels toward the law just exactly as the Senator does toward prohibition.

Mr. BRUCE. He does, but his neighbors do not. The difference in this case is not only that the man who takes——

Mr. BORAH. I am not sure that the Senator's neighbors do. That is what I want to find out.

Mr. BRUCE. I have previously stated to the Senator that many of my neighbors regard with great leniency the violation of the Volstead Act, because, as they conceive it, that act has no true moral sanction behind it. It endeavors to pronounce something as being criminal per se that is not so.

Mr. BORAH. Mr. President, there are hun-

dreds and thousands and millions of people in the United States, as good people as live, who are devoted to law and order, who believe in obedience to law, who take the very opposite view from that of the able Senator from Maryland. They believe that while we are making a fight to maintain those provisions of the Constitution which protect property it is just as necessary to make a fight for the maintenance of the provisions which protect human values and the home.

Mr. BRUCE. That is simply because they are misguided enthusiasts who are incapable of drawing the true line of distinction between what is real criminality and what is merely artificial criminality.

Mr. BORAH. That doctrine will not do in this country.

Mr. EDGE rose.

Mr. BORAH. I yield to the Senator from New Jersey.

Mr. EDGE. I will wait until the Senator from Idaho shall have finished his remarks.

Mr. BORAH. Let us go back for a moment to what I think is the most serious proposition here. I regard all this discussion of percentages of the alcoholic content of liquor as evading the question, not intentionally, perhaps, upon the part of all those who discuss it. Every Senator here knows from the letters which he receives every day that the thing which many people are asking is not a change of percentage still keeping the liquor non-intoxicating, but what they are writing Senators about now, what they are passing resolutions about, what they are petitioning about is for intoxicating beverages.

It is the duty of the Senate of the United States, if it has not lost all capacity for leadership, to say to these people, "You want intoxi-

cating beverages. We say to you that you can not get them under the Constitution, which we have sworn to support, until you, by the orderly processes pointed out by the Constitution, rewrite that instrument."

Mr. BRUCE. Mr. President——

Mr. BORAH. Just a moment. I want to speak for a few moments.

Mr. BRUCE. Of course.

Mr. BORAH. It is our duty to do that, as men whose business it is to uphold the Constitution, who have sworn to support the Constitution and who ought to have some capacity for leadership when the Constitution of the United States is involved. We should say to those who are advocating a change, "What you want is intoxicating liquors, but that is what you can not have until you take out of the Constitution that which the people of the United States put into the Constitution." That is what I am contending for here today. Let the people understand that this proposed change of the Volstead Act would settle nothing; it would solve no problem. It would leave liquor here haunting the corridors of the Capitol, and these people would be petitioning Congress next year just the same as they are doing this year. What these people are interested in is doing what the Constitution does not permit them to do.

Mr. BRUCE and Mr. EDGE addressed the Chair.

The VICE PRESIDENT. Does the Senator from Idaho yield, and, if so, to whom?

Mr. EDGE. I thought the Senator from Idaho had concluded his remarks.

Mr. BRUCE. Mr. President, the Senator from Idaho knows that I have offered an amendment to the Constitution involving a combination of the Quebec plan of government

supervision and control and local option; in other words, I am pursuing the very pathway that he thinks that I and those associated with me should pursue. Now I will ask the Senator from Idaho, Does that constitutional amendment meet with his approval or not?

Mr. BORAH. Distinctly not. I do not want this Government to become a saloon keeper. If that must go on, let it be by individuals. But, as I said a moment ago, I do not want to discuss indefinitely and exclusively the question of percentages.

I wish to refer again, for the consideration of the Senate, to the great referendum which the people are going to hold in the state of New York. They are going to petition the Congress of the United States by the voice of the people of New York to do what? To violate the Constitution of the United States. Do the people of a great Commonwealth such as New York, with its distinguished leaders of the past and its distinguished leaders of the present, its great educators, its great lawyers, its great jurists, and its great religionists, propose to come down here with a solemn referendum to the effect that the Congress of the United States shall disregard the Constitution of the United States? They propose to petition us to leave the enforcement of the Constitution to the States—a shameless proposition.

Is it not infinitely better, more in accord with good citizenship and with representative government, that they submit to the people of the State of New York the question of petitioning Congress to submit to the States for ratification an amendment which will take out the eighteenth amendment from the Constitution? Can you meet the question any other way? Is there any other orderly and decent way to proceed? Can you solve the problem

by any other method or any other process? I ask, Mr. President, is it honest, is it candid leadership, is it in accord with the principles of the great Republican and Democratic parties to seek to evade the question by asking us to violate the Constitution of the United States, to disregard it? Let us be candid enough to speak to the people in constitutional language, in language befitting public men in a government of law.

Mr. President, the liquor problem can not be disposed of by amendments which do nothing more than add an additional flavor to the drink. It can not be put at rest by changing the percentage if that percentage fails to give intoxicants. The contest is not over percentages. It involves deeper and more searching questions. After you have made your changes as proposed, if you remain within the provisions of the Constitution, your liquor problem will still be here, unsettled, undetermined, haunting the corridors of Congress and tormenting public opinion, insistent of attention and rapacious in its demands. Deep convictions are found on either side of this question. Great governmental, as well as great moral, problems are involved and percentages will not meet the situation.

But what I arose to say at this time is that whether prohibition stays or goes, rises or falls, the Constitution should be maintained and supported as it is written by all law-abiding people until it is changed in the manner pointed out by the Constitution. Obedience to the law is the rock foundation upon which our whole structure rests. To disregard it is to strike at the life of the Nation. And while disrespect for law applies to all laws, statutes, and enacted laws, there is a more sacred import to that rule of conduct when the Constitution itself is involved. It is the law of the land, the charter of our Government, approved

by the people, defining and guaranteeing the rights of the citizen, prescribing the duties, functions, and limitations of government, and to disregard it is to spell the end of order and representative government.

